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October 24, 2001

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VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: Madera Unified School District
Supplement to Request for Review
CC Docket Nos. 96-45, 97-21/
Billed Entity No. 144042
Form 471 Application No. 230938

Dear Ms. Salas:

Transmitted herewith, on behalf of Madera Unified School District ("Madera"), are an original and four (4) copies of its Supplement to Request for Review of the decision of the Schools and Libraries Division ("SLD") Administrator in the above-captioned proceeding. For the reasons set forth in the Request for Review and in the enclosed Supplement, Madera requests that the Commission direct SLD to accept Madera's application as having been filed during the SLD's January 2001 filing window.

An extra copy of this filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

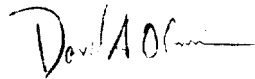
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Magalie Roman Salas, Esq.
October 24, 2001
Page 2

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "David A. O'Connor", with a horizontal line extending to the right.

David A. O'Connor
Counsel for Madera Unified School District

Enclosure

cc: Universal Service Administrative Company
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
Request for Review by)	
)	
Madera Unified School District)	File No. SLD-_____
)	
of Decision of Universal Service)	
Administrator)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors)	CC Docket No. 97-21
of the National Exchange Carriers)	
Association, Inc.)	

To: Accounting Policy Division
Common Carrier Bureau

Re: Madera Unified School District, Billed Entity Number 144042
Form 471 Application Number 230938
Funding Year 4, 7/1/2001- 6/30/2002

Supplement to Request for Review

Madera Unified School District ("Madera"), by its attorneys, hereby submits this Supplement to its Request for Review filed on September 10, 2001 with respect to its FCC Form 471 Application Number 230938. This Supplement expands upon Madera's arguments in support of its contention that the Schools and Libraries Division ("SLD") erred in denying Madera's Year Four funding request.

The submission of supplemental information in a Request for Review proceeding is permitted. Supplemental information has been permitted, for example, in *Request for Review by Naperville Community Unit School District 203*,

Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Order, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, FCC 01-73 (rel. Feb. 27, 2001) (“*Naperville*”). In light of the precedent of *Naperville*, and the D.C. Circuit’s directive to the Commission to accord equal treatment to similarly situated parties, *see, e.g., Melody Music Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965), Madera requests that the Commission consider the additional arguments set forth in this Supplement.

I. Congressional Intent Should Not Be Thwarted by the SLD’s Arbitrary Policies.

A. Congress Intended that Bona Fide Requests of All Eligible Schools for Telecommunications Services Should Be Granted.

One of the fundamental goals of the universal service provisions of the Telecommunications Act of 1996 was to ensure the ability of K-12 schools and libraries to obtain access to advanced telecommunications services. *See Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Fifth Order on Reconsideration, 13 FCC Rcd 14,915, 14,919 (1998) (citing Joint Explanatory Statement of the Committee of Conference). Section 254(b)(6) of the Communications Act of 1934, as amended, requires the Commission to “base policies for the preservation and advancement of universal service on the following principles: . . . Elementary and secondary schools and classrooms . . . should have access to advanced telecommunications services as described in subsection (h) [of this section].” 47 U.S.C.A. § 254(b)(6). Subsection (h)(1)(B) provides that

[a]ll telecommunications carriers serving a geographic area *shall, upon a bona fide request* for any of its services that are within the definition of universal service . . . provide such services to elementary schools, secondary schools, and libraries *for educational purposes* at rates less than the amounts charged for similar services to other parties.

Id. § 254(h)(1)(B) (emphasis added).

The foregoing makes it clear, and the Commission has recognized, that Congress intended that all eligible schools receive communications service discounts. Indeed, the statute imposes only two requirements on a school desiring discounts. First, the requested services must be for educational purposes. Second, the school must submit a “*bona fide request*.” And the statute commands that when a carrier receives such a request, it “shall” provide service at a discount.

In this case, Madera made a good faith request for telecommunications services to be used for educational purposes. The school’s application is a perfectly good application in all respects. The only reason that SLD denied the application appears to be that the supporting documents to the online application were mailed one day late. However, Madera made a good faith effort to expedite the SLD’s receipt of the supporting materials by sending the materials via an overnight carrier.

The overall purpose of the legislation requires SLD and the Commission to overlook minor procedural errors in this instance, in favor of carrying out the Congressional purpose that these telecommunications services be made available to schools and libraries making bona fide requests

for such services. Because Madera made a *bona fide* request for telecommunications services, its request should be granted.

B. The SLD's Policy of Determining the Acceptability of Applications Based on the Applications' Postmarked Date is Arbitrary and Capricious.

A reviewing court is required to hold unlawful any agency action determined to be arbitrary or capricious. 5 U.S.C. § 706(2)(A). The SLD has established a cut-off date for accepting mailed applications, based on the postmarked date of the application. Thus, for example, School A could send its application via regular mail on Thursday, January 18 and the application could be received by SLD on Tuesday, January 23. School B's application could be sent via overnight delivery on Friday, January 19 and be received by SLD on Monday, January 22. In this scenario, SLD would accept School A's application and reject School B's application, even though School B's application was received one day earlier than School A's application. The apparent justification for this SLD policy is that it is administratively appropriate to establish a cut-off date in order to expedite the application review process.

The SLD's policy does nothing to forward the purpose of expediting the application review process. Rather, the policy amounts to an arbitrary determination of which applications are acceptable for filing. It is capricious and arbitrary to hold that Madera's application must be denied for having delayed the administrative process when the SLD would accept and process

applications that were received *after* Madera's application was received. Indeed, it is extremely likely that the SLD received Madera's supporting materials well before the SLD received the supporting materials of schools that chose to send their supporting materials via regular mail on January 18, 2001.

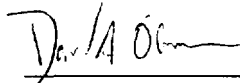
It is important to distinguish the SLD's "postmarked" policy from the Commission's own policy concerning the filing of appeals in E-rate funding decisions. The Commission requires that E-rate appeals be *filed* within 30 days of a decision by the SLD. This is a clear, consistent policy, because no matter the type of mailing delivery used, the appeal must be *received* by the Commission on a date certain. In contrast, the SLD's arbitrary policy of basing application acceptability on the postmarked date does not withstand scrutiny under Section 706 of the Administrative Procedure Act, because applications received earlier in time are rejected while those received later in time are accepted. To comport with the requirements of Section 706, SLD must revise its policy to establish a *filing date* deadline that does not discriminate on the basis of postal delivery methods employed by applicants. Until the policy is revised, Madera cannot be penalized for having failed to comply with an arbitrary procedure.

II. Conclusion.

For the reasons set forth in Madera's Request for Review and in this Supplement, the Commission should direct the SLD to accept Madera's FCC Form 471 application as having been timely filed during the SLD's filing window for Year 4.

Respectfully submitted,

Madera Unified School District



Mark J. Palchick

Alan Y. Naftalin

David A. O'Connor

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Its Attorneys

Dated: October 24, 2001

CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on October 24, 2001, I caused a copy of the foregoing Supplement to Request for Review to be delivered via first-class mail, postage prepaid to the following:

Universal Service Administrative Company
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981



Laura Ledet